STATE OF MICHIGAN

COURT OF APPEALS

JAMES SAVAGE and JENNIFER SAVAGE,

Plaintiffs-Appellants,

v

STATE FARM FIRE & CASUALTY COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 13, 2005

No. 262499
Grand Traverse Circuit Court
LC No. 03-023330-NI

Before: O'Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiffs appeal from an order of the circuit court granting summary disposition in favor of defendant. We affirm.

For purposes of this appeal, we accept plaintiffs' allegations of the facts underlying this case as true. According to plaintiffs, they suffered a fire loss at their Traverse City area home on Thanksgiving Day 1999 due to an electrical fire in one of the bedrooms. Their insurer, defendant State Farm, was promptly notified of the loss. Unfortunately, the relationship between plaintiffs and defendant's adjuster quickly deteriorated. Disputes arose regarding how quickly the claim was being processed, as well as the amount paid for monthly living expenses while plaintiffs were out of their house during repairs. Ultimately, the parties were also in dispute on the value of the contents lost during the fire as well. The relationship became so bad, Mr. Savage was banned from the State Farm premises in Traverse City and the claim was thereafter handled by an adjuster in Portage.

The claims process was further impeded when defendant suspended payments for the alternate living expenses. Defendant claimed to have received an anonymous tip in May 2000 that plaintiffs were not living at the residence they claimed during the reconstruction period, a condo unit owned by Mrs. Savage's parents. An investigator visited the location, speaking to Mrs. Savage's father and a neighbor who were outside at the time. The investigator was informed that the vehicle parked in the driveway belonged to Mr. Savage, that the Savages did in fact live there, that Mr. Savage was in the house, asleep, at the time and that the investigator was welcome to enter the premises to investigate the matter for himself. The investigator declined. Defendant did, however, demand an examination under oath from the plaintiffs, a process that took several months to complete and during which defendant suspended the payments for

alternate living expenses. Ultimately, defendant did not substantiate any fraud with respect to the alternate living expenses.

Ultimately, the value of the claim was submitted to a panel of appraisers, who rendered their award in April of 2002. Defendant made final payment in July 2002, informing plaintiffs that it would be making no further payments on their claim. Plaintiffs filed the instant action in November 2003. With the exception of the claim for penalty interest, which was later resolved, the trial court granted summary disposition to defendant, concluding that all of plaintiffs' claims arise out of the insurance contract and that they failed to file suit within one year as required by the contract. We agree. We review the grant of summary disposition de novo. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

Plaintiffs do not dispute the fact that the insurance policy at issue here provides that any action under the policy must be filed within one year of the date of loss. This contractual provision is consistent with MCL 500.2833(1)(q) which provides that a fire insurance policy must contain a provision that an action under the policy must be brought within one year after the loss, unless a longer period is specified within the policy. The statute does provide for tolling from the time the insured notified the insurer of the loss until the insurer denies liability.

Plaintiffs raise a novel argument on this issue. Plaintiffs argue that defendant never denied liability, rather it merely breached the contract. But this argument, while creative, is without merit. A denial of liability, if wrongful, constitutes a breach of contract. Indeed, the essence of plaintiffs' claims is that defendant breached the contract by denying liability beyond the amount which it had paid through the summer of 2002. It is undisputed that defendant issued a letter in July 2002 stating that the enclosed payment constituted the last payment it was going to make and that it was closing the claim. That letter reflects a formal denial of any further liability and stopped any tolling of the period of limitations. Therefore, at most, plaintiffs had one year from the time of that letter to commence their action. The action was not filed until approximately sixteen months later. Therefore, any claim under the policy was untimely and the trial court properly granted summary disposition to defendant with respect to any claim arising under the policy.

This then raises the question whether plaintiffs have a non-contractual claim that is not subject to the one-year limitation. But the closest plaintiffs come to arguing on appeal that there is a tort claim underlying this case is that defendant acted in bad faith in handling their claim. The case cited by plaintiffs, *Auman v Federal Ins Co*, 81 Mich App 740; 266 NW2d 457 (1978), is not on point. *Auman* dealt with the duty of an insurance company to act in good faith in negotiating a settlement on behalf of its insured in a case brought against its insured for which there is coverage under a policy issued by the insurance company. It did not deal with the issue of the duty an insurance company owes to its insured for a claim by the insured against the insurance company. On this point, this Court has observed that the "tort of bad-faith handling of an insurance claim" is "nonexistent." *Runions v Auto-Owners Ins Co*, 197 Mich App 105, 110; 495 NW2d 166 (1992). While it may very well be the case that defendant handled plaintiffs' claim in a bad-faith manner, ultimately plaintiffs' claims against defendant arise out of a claim of breach of contract. And that claim had to be filed within one year of defendant closing the file

on this case. Because the action was not filed within one year, the trial court correctly concluded that plaintiffs' claims were untimely and that summary disposition was appropriate.

Affirmed. Defendant may tax costs.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ William B. Murphy